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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 301

BENJAMIN HALL AND ALTUS HALL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 149–152) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 11, 1945 (R. 152). The petition for a writ of certiorari was filed August 6, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether there is sufficient evidence to support petitioners' convictions.

2. Whether it was proper to admit against petitioners evidence suppressed as to a codefendant who was not tried with petitioners.

STATEMENT

An indictment for conspiracy was returned against petitioners and one Hefner in the United States District Court for the Northern District of Georgia, charging that they, and other persons named as coconspirators but not indicted, conspired to defraud the United States and to violate the provisions of the Internal Revenue Code pertaining to the manufacture, transportation, sale, purchase, and distribution of liquor (R. 1–7). Hefner's motion to suppress evidence in respect of a distillery found in the curtilage of his residence on the ground that the search and seizure was illegal, was granted (R. 12). The trial was severed as to Hefner (R. 12–13) and petitioners were tried and found guilty (R. 8). They were each sentenced to imprisonment for two years and to pay a fine of $2,000, the sentence against Benjamin Hall to commence after the expiration of other sentences which he was then serving (R. 8–9, 10–11). On appeal, the judgments were affirmed (R. 152).

The evidence for the Government may be summarized as follows:

On November 18, 1942, Georgia officials seized a non-registered distillery operated by Hefner about twelve miles from Atlanta, Georgia (R. 45). Later that same month petitioner Benjamin Hall approached one Kidder, who owned a farm on Highway 42 in the vicinity of Conley, Georgia, and told Kidder that he had a purchaser for the farm (R. 25–26). Hall returned with Hefner that afternoon and Hefner arranged to purchase the farm for cash (R. 26–27). Neither Hall nor Hefner inspected the property carefully and Hefner insisted on quick possession (R. 26–27).

On January 8, 1943, a state officer and a federal agent stationed on Highway 42 in the vicinity of Conley observed a cream colored Ford coupe followed by a Ford coach. When the cars approached the point where the officers were parked, the coach was allowed to pass the coupe, and the speed of the latter was reduced, but the officers were unable to pass it because of traffic coming from the opposite direction. The coach was nevertheless overtaken and found to contain 165 gallons of illicit whiskey. After the coach was stopped the coupe turned around and went in the other direction. (R. 13–15, 21–23.) The coupe was registered in the name of Benjamin Hall (R. 21, 60).

On April 9, 1943, federal officers found a large non-registered still in the tobacco barn of the farm which Hefner had purchased and also dis-

covered 150 gallons of non-tax-paid whiskey, yeast, fruit jars, coke, barrels and other equipment (R. 15–16, 33–35).

In August 1943, petitioners rented a building in Atlanta, Georgia, formerly occupied by the Whitehall Mattress Company (R. 42–43, 120). They obtained a license to deal in used cars (R. 38), but officers who observed the premises during the month of September saw no used cars except one 1942 model Cadillac (R. 38, 101). The mattress company sign was not removed and no signs advertising used cars were placed on the building (R. 126). Fruit jars (R. 17–18, 39, 41, 52–53, 58, 66, 89), sacks of what appeared to be sugar (R. 64), cartons of yeast (R. 66), and bags of coke (R. 57) were observed stored in the premises, or being delivered to or taken from the premises. Petitioners were frequently seen there (R. 17, 18, 48, 53–54, 57–58, 64–67, 88) and Hefner occasionally (R. 56–57, 67, 88, 89, 93). Petitioner Altus Hall was observed driving a truck containing sacks which appeared to be sugar to the premises (R. 64), and petitioner Benjamin Hall was seen carrying a carton of yeast from the building to his car (R. 66). Cars and trucks regularly visited the premises (R. 18, 36, 53, 57, 64–66, 88, 91). A truck driven by Altus Hall for which he and others constructed a body (R. 57, 89) was later driven by Hefner when he obtained coke and fruit jars (R. 92–94). A green Chevrolet truck, which was observed at the Whitehall Mat-

tress Company premises being loaded with fruit jars (R. 64–65), and driven by Altus Hall (R. 92), was subsequently seen at Hefner's farm, and later that day it was seized with 42 gallons of illicit liquor (R. 16, 112). A blue paneled truck observed at the Whitehall building (R. 51–52) was subsequently found to be carrying illicit liquor (R. 91, 112).

ARGUMENT

1. Petitioners' attack on the sufficiency of the evidence to support their convictions (Pet. 2, 4–5) presents no question for further review by this Court. *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 263 U. S. 586, 589–590. The evidence, which is summarized in the Statement, *supra,* and in the opinion of the circuit court of appeals (R. 150–151), fully justifies the jury's conclusion that petitioners were engaged in a conspiracy with Hefner to violate the liquor laws.

2. Petitioners' further contention that it was improper to admit against them evidence as to the still found at Hefner's farm in April 1943, which was suppressed as to Hefner (Pet. 2, 4, 5), is without merit. It is well established that the constitutional protection against unlawful search and seizure is a personal one, and that evidence obtained in violation of one defendant's rights may be introduced against a codefendant whose rights have not been violated. *Bushouse* v. *United*

States, 67 F. 2d 843, 844 (C. C. A. 6); *United States* v. *Stappenback,* 61 F. 2d 955, 958 (C. C. A. 2); *In re Dooley,* 48 F. 2d 121 (C. C. A. 2); *Schwartz* v. *United States,* 294 Fed. 528 (C. C. A. 5); *Remus* v. *United States,* 291 Fed. 501, 511 (C. C. A. 6), certiorari denied, 263 U. S. 717.

CONCLUSION

The decision below is correct and it presents no conflict of decisions or question of general importance. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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